Sundays and statutory holidays) — "shall be entitled to double his ordinary rate of pay...." which is a mere repetition of the words of the Ordinance.

Considerable importance was attached by the appellant to the recommendation of the Court of Inquiry into the dispute between the Singapore Traction Company Limited and its employees which reads as follows:—

"30. We recommend that work on any of the days specified in Schedule A to the Labour Ordinance should be paid for at double the ordinary rate of wages as provided in the Labour Ordinance, and we reject the Union's claim for double pay in addition to the wages paid in respect of the holiday."

This was not a judicial pronouncement on the construction of a particular provision in the Labour Ordinance but merely a recommendation by a Court of Inquiry which may have been influenced by various factors and we are unable to derive any assistance from it. I do not know whether the Court of Inquiry had the benefit which this Court has had of an exhaustive and critical examination of the relevant provisions of the legislation in question. If it was intended to be an authoritative statement as to the correct construction to be placed upon the section I have the misfortune, with the greatest respect, to disagree with it.

I think, perhaps, I should add that the appellant company has very properly brought this appeal in order to obtain a decision on what, in the circumstances of this case, is the correct amount to be paid and with no wish to evade legal liability.

For the reasons which I have already indicated the appeal fails and must be dismissed with costs.

Chua and **Kulasekaram JJ.** concurred.

Appeal dismissed.

Solicitors: *Braddell Bros.*; *David Marshall.*

PUBLIC PROSECUTOR v. SOO YOKE TECK

[A.Cr.J. (Ong J.) October 30, 1963]

[K.L. — Criminal Appeal No. 56 of 1963]

Road Traffic Ordinance, 1958, ss.120(2) and 138(3) —Overloading—Liability of servant—Punishment as deterrent.

Criminal Procedure—"Cautioned and discharged" —Criminal Procedure Code (Cap. 6), s.173A(ii)(a).

This was an appeal by the Public Prosecutor against an order by a magistrate under section 173A(ii)(a) of the Criminal Procedure Code against a lorry driver who had pleaded guilty to an offence under section 120(2) of the Road Traffic Ordinance. The learned magistrate had stated as his reason for proceeding under section 173A (ii)(a) that the vehicle owner had already been fined.

Held: by virtue of section 138(3) of the Road Traffic Ordinance the respondent as driver was liable to punishment no less than the owner of the vehicle though it did not follow that the punishment should be of the same severity as that imposed on the owner. The punishment must be sufficient to act as a deterrent.

Order of the learned magistrate set aside and a fine of $100 imposed in lieu thereof.

CRIMINAL APPEAL.

Hamzah bin Salleh (Deputy Public Prosecutor) for the appellant.

Lall Singh Muker for the respondent.

Ong J.: This is an appeal by the Public Prosecutor against an order by a Kuala Lumpur magistrate who had convicted the respondent lorry driver on his plea of guilty to an offence under section 120(2) of the Road Traffic Ordinance 1958 of overloading his vehicle with an excess weight of nearly 8 tons. In purported compliance with section 173A of the Criminal Procedure Code the learned magistrate "cautioned and discharged" the respondent. The Public Prosecutor appeals against the inadequacy of the sentence.

The learned magistrate in his grounds of judgment, states that he had made his order under section 173A(ii)(a) because the vehicle owner had already been fined. I am informed by the learned Deputy Public Prosecutor that the fine imposed on the owner had been $100, (which was manifestly inadequate) but it had been increased on appeal to $400.

The overloading which was considerable was clearly deliberate. The respondent as a servant was liable to punishment, no less than his employer, by virtue of section 138(3) of the Road Traffic Ordinance, 1958. It does not follow, however, that he ought to be fined the same amount as the vehicle owner. Allowing him to get off scot-free would be wrong in principle because he is not deterred from repeating the offence in future. Since the profit goes into the employer's pocket the vehicle owner must bear the brunt. In the circumstances, I think the proper sentence on the respondent should be a fine of $100 which should serve as a sufficient deterrent for a wage-earner. In case the vehicle owner should indemnify him, it is sufficient that this person had already paid a substantial fine as owner. I accordingly quash the order of the magistrate and in lieu thereof sentence the respondent to pay a fine of $100.

Order accordingly.

Solicitors: *Lovelace & Hastings.*

RE LIM YEW SIANG

[R.Cr.J. (Gill J.) November 11, 1963]

[K.L. — Criminal Revision No. 9 of 1963]

Criminal Procedure—Failure to appear on summons —Issue of warrant for arrest—Appearance on own volition—Magistrate dealing with charges in absence of prosecuting officer—Criminal Procedure Code (Cap.6), s.137.

The defendant was charged with failing to pay contributions under the Employees' Provident Fund Ordinance, 1951, and a warrant of arrest was issued against